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In the Supreme Court of the United States

OCTOBER TERM, 1980

GREGORY FREEMAN, PETITIONER,

VS.

STATE OF OHIO, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO

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QUESTIONS PRESENTED

1. Whether mere presence in an alleged high crime area in the early morning hours constitutes an objective articulable basis upon which to premise an investigatory stop of an automobile.

2. Whether general suspicion on the part of a rookie police officer constitutes a sufficient basis upon which to justify the stop of an automobile in an alleged high crime area in the absence of any specific articulable facts to indicate that the operator of the automobile may have been engaged in a violation of the law.

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No.

In the Supreme Court of the United States

OCTOBER TERM, 1980

GREGORY FREEMAN, PETITIONER,

vs.

STATE OF OHIO, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO

The Petitioner, Gregory Freeman, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of the State of Ohio which was rendered in this proceeding on December 30, 1980.

OPINION BELOW

The opinion of the Supreme Court of Ohio is reported as *State* v *Freeman*, 64 Ohio St. 2d 291, ____ N.E. 2d ____ (1980) and is included in the Appendix hereto. The opinion of the Court of Appeals for Lucas County, Ohio is unreported and is also included in the Appendix. The Court of Common

Pleas of Lucas County, Ohio rendered no written opinion in this matter.

JURISDICTION

The judgment of the Supreme Court of the State of Ohio sought to be reviewed was entered on December 30, 1980, and this petition for certiorari is being filed within ninety (90) days of that date. The jurisdiction of this court is invoked pursuant to Title 28 U.S.C. Section 1257 (3).

CONSTITUTIONAL PROVISION INVOLVED

Fourth Amendment, United States Constitution:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATEMENT OF THE CASE

Petitioner, Gregory Freeman (hereinafter referred to as the "Defendant"), is seeking review of his conviction for aggravated robbery. The Fourth Amendment issue involved herein was raised by the Defendant in timely fashion by means of a pretrial motion to suppress certain evidence that was seized after the Defendant's automobile was stopped by the police. The Defendant contends that the initial stop of his automobile was in violation of his rights under the Fourth Amendment. This contention was rejected by the trial court and its denial of Defendant's motion to suppress was affirmed on appeal. The only facts relevant to a consideration of the questions presented are those which relate the circumstances surrounding the stop of Defendant's automobile.

On March 25, 1979, at approximately 3:00 a.m., Officer Robert L. Bratton of the Village of Northwood, Ohio, Police Department was patrolling the vicinity of a motel known as the Quality Inn. Officer Bratton had been a policeman for only six (6) months at the time. As he drove through the Quality Inn parking lot, Bratton observed the Defendant sitting alone in an automobile with both the lights and engine turned off. Officer Bratton drove out of the parking lot and patrolled some side streets before returning to the parking lot where the Defendant remained sitting in his parked automobile. (Record of Suppression Hearing, hereinafter cited as "R.", at 85-86).

Officer Bratton then stopped his police car and entered the Quality Inn to speak with the desk clerk who assured him that there had been no problems of any kind that evening. As Bratton observed the Defendant drive out of the parking lot he followed him with his police car. Although the Defendant had broken no traffic laws nor engaged in any illegal conduct, young Officer Bratton stopped Defendant's vehicle and ordered him to pull over (R. 86-87). Bratton gave the following reasons for his decision to stop the Defendant's automobile:

> "Q. (by the prosecutor, Mr. Schafer) Okay now, what was the reason that you stopped him?
>
> A. Primarily because of the high crime that we've had in that area with B and E to autos, a lot of criminal damage. This was the reason I stopped him.
>
> Q. Was there anything unusual about him sitting in the parking lot during that period of time?
>
> A. Not other than the fact that he was just sitting there with the car not running at 3:00 a.m. in the morning." (R. 88-89)

Upon cross-examination, Officer Bratton was questioned further by defense counsel, Mr. Paul Geller, about his reasons for stopping Defendant's vehicle:

> "Q. (by Mr. Geller): Officer, you just stopped this man because of the high crime in the area, correct, yes or no?
>
> A. Yes.
>
> Q. No other reason?
>
> A. Yes." (R. 90)

It is undisputed that prior to the stop, Defendant had committed no illegal acts:

> "Q. (by Mr. Geller): Okay and you didn't have any contact with this man until he started driving away, did you?
>
> A. No.
>
> Q. He had broken no laws?
>
> A. No.
>
> Q. And you were going to stop him to see if he had committed a crime, correct. That's why you stopped him, because he was suspicious.
>
> A. Right." (R. 90)

There is nothing in the record to indicate that Officer Bratton had any articulable basis upon which to justify a suspicion that Defendant may have been engaged in criminal activity before the car was stopped. After the Defendant was pulled over and questioned by Officer Bratton, he explained that he had been waiting for a lady friend whom he had been visiting at the Quality Inn. Officer Bratton demanded identification and the Defendant produced the driver's license of a man for whom a traffic warrant was outstanding. Subsequently, the Defendant was told to get out of the car and a .25 caliber

automatic pistol was found upon the front seat in plain view. (R. 87-88).

The Defendant was eventually placed on trial for one count of kidnapping and one count of aggravated robbery arising out of events unrelated to the March 25, 1980, stop of his automobile. The pistol in question, however, was introduced into evidence at that trial. The jury found the Defendant not guilty of the kidnapping charge, but convicted him for the aggravated robbery. The Defendant was sentenced to serve five (5) to twenty-five (25) years and presently remains incarcerated.

The Court of Appeals of Lucas County, Ohio, affirmed Defendant's conviction on his first appeal as of right. Upon motion of the Defendant, said court certified its decision to the Supreme Court of Ohio for review and final determination pursuant to Article IV, Section 3 of the Ohio Constitution and Ohio Revised Code Section 2505.072, finding that its decision was in direct conflict with the decisions of two (2) other Ohio Courts of Appeals. After receiving briefs and hearing oral arguments, the Supreme Court of Ohio affirmed the decision appealed from over a vigorous dissent by Chief Justice Frank Celebrezze.

REASONS FOR GRANTING THE WRIT

I

THE DECISION APPEALED FROM IS IN CONFLICT WITH DECISIONS OF OTHER STATE COURTS OF LAST RESORT AS WELL AS DECISIONS OF UNITED STATES CIRCUIT COURTS OF APPEALS ON THE SAME ISSUE.

Defendant respectfully contends that the initial stop of his automobile was in violation of his rights under the Fourth

Amendment which is, of course, made applicable to the States by operation of the due process clause of the Fourteenth Amendment. At the outset, Defendant would point out that the actions of the police officer in this case were not premised upon a report of a crime or any other information or "tip" obtained from a third party. The only question is whether the observations made by the officer himself engendered such objective and articulable suspicion as to constitute a lawful basis for the stop of Defendant's automobile.

The recent decision of this court in *Delaware* v *Prouse*, 440 U.S. 648, 654-655, 663 (1979) clearly established that an officer may stop a vehicle only if he is aware of specific objective articulable facts which would engender a reasonable suspicion that the vehicle or its occupants are involved in a violation of the law. In *Brown* v *Texas*, 443 U.S. 47 (1979) it was held that generally "suspicious" behavior of persons, even in a high crime area, does not, without more, provide a police officer with a constitutionally valid basis to make a stop.

Since the decisions in *Brown* and *Prouse*, those State Courts of last resort and Federal Circuit Courts of Appeals which have considered cases with facts analogous to those of the case at bar have, without exception, reached results which are in direct conflict with the decision of the Supreme Court of Ohio in the instant case. In *Commonwealth* v *Bacon*, 411 N.E. 2d 772 (Mass. 1980) the Supreme Court of Massachusetts held that the fact that two (2) youthful appearing men were operating a four-year-old luxury car at 4:10 a.m. coupled with the fact that the driver obstructed his face from passing policemen did not give rise to such reasonable suspicion as would justify a stop of the automobile. Similarly, in *State* v *Larson*, 93 Wash. 2d 638, 611 P. 2d (1980) the Washington Supreme Court found no basis upon which to justify a stop where an automobile that was illegally parked in a closed park at 3:00 a.m. began to pull away as a police car approached. The

Supreme Court of Rhode Island held that the fact that an automobile appears heavily weighted down in the trunk area does not alone provide reasonable suspicion for a stop in *State* v *DeMasi*, 419 A. 2d 285 (R.I. 1980). In *United States* v *Beck*, 602 F. 2d 726 (9th Cir. 1979) the United States Court of Appeals for the Ninth Circuit found no articulable basis to justify a stop where a strange automobile was parked near a "Kwik Mart" store in a high crime area. To similar effect is the holding of the Nebraska Supreme Court in *State* v *Kretchmar*, 203 Neb. 663, 280 N.W. 2d 46 (1979).

All of the above-cited cases were decided subsequent to this Court's decision in *Delaware* v *Prouse*, 440 U.S. 648 (1979). Prior to *Prouse*, the cases from the state courts and the Federal Circuit Courts of Appeals were divided. In certain jurisdictions, however, the doctrine clarified in *Prouse* had been recognized even prior to the decision of this court in that case. See, *e.g. State* v *Cooley*, 229 N.W. 2d 755 (Iowa, 1975); *State* v *Hocker*, 113 Ariz. 450, 556 P. 2d 784 (1976); *United States* v *Montgomery*, 561 F. 2d 875 (D.C. Cir. 1977). This also appears to be the interpretation followed by the lower Appellate Courts of Ohio, prior to the decision in the case at bar. See, *State* v *Barrow*, 60 Ohio App. 2d 355, 397 N.E. 2d 422 (1978).

The instant case represents the only post-*Prouse* decision from a State Court of last resort or a Federal Circuit Court of Appeals which has interpreted the Fourth Amendment to permit an investigatory stop in the absence of specific, objective, articulable facts from which an officer might conclude that the person stopped was engaged in some particular criminal activity. This anomally represents a significant departure from the standards established by the decisions of this court, as interpreted and applied by the highest courts of the various state and federal jurisdictions which have considered the question.

Since Fourth Amendment questions are no longer cognizable in federal habeas corpus proceedings, *Stone* v *Powell*, 434 U.S. 1343 (1977), the only avenue of review open to the Defendant is by petition for certiorari. Defendant respectfully contends that the divergent interpretation of the law expressed by the Supreme Court of Ohio is a unique anomaly in the realm of post-*Prouse* Fourth Amendment case law. Besides the substantiality of the Constitutional question involved, Defendant respectfully submits that the issuance of a writ of certiorari is appropriate in this case in order to maintain a uniform interpretation of the Fourth Amendment throughout the various state and federal jurisdictions. Since the decision sought to be reviewed is in conflict with all other recently decided cases on this issue, Defendant respectfully contends that this case is one which this court should accept for review.

II

THE DECISION APPEALED FROM WAS ERRONEOUSLY DECIDED AND IS IN CONFLICT WITH DECISIONS OF THIS COURT WITH RESPECT TO A SIGNIFICANT AND RECURRING ISSUE.

In the case at bar, the stop of Defendant's automobile was based solely upon the inarticulable suspicions or "hunch" of a rookie police officer. Although the Defendant was observed in an alleged "high crime area" young Officer Bratton was totally unable to articulate any specific objective facts sufficient to support a reasonable suspicion that the Defendant was engaged in any particular criminal activity. It is undisputed that the Defendant had broken no laws, and Officer Bratton admitted that his decision to stop Defendant's automobile was based only upon his general feeling of suspicion and the asserted fact that there had been a lot of vandalism and theft in the Quality Inn parking lot. No reports of any such offenses had been

received that evening, however, and the desk clerk confirmed that there had been no problems of any kind.

Whether reasonable suspicion or probable cause may have developed after the initial stop of the automobile is immaterial as the conduct of the defendant subsequent to the stop cannot provide a basis for justifying the stop in the first instance. *Brown* v *Texas*, 443 U.S. 47, 52 (1979).

This court's holdings in *Brown* and in *Delaware* v *Prouse*, 440 U.S. 648, 654-655 and 663 (1979) clearly establish that a stop of a person or automobile is a seizure within the meaning of the Fourth Amendment and that such a stop is constitutionally permissible only where it is premised upon specific objective articulable facts within the knowledge of the officer involved. This interpretation of the Fourth Amendment is not to any extent a recent development. In *Terry* v *Ohio*, 392 U.S. 1, 21-22 (1968) it was held that a stop upon less than probable cause can only be justified where it is based upon specific and articulable facts, rather than vague feelings of suspicion or inarticulate hunches.

Thus, before a stop can be deemed lawful, the officer involved must be aware of specific facts sufficient to support a reasonable suspicion that the person to be stopped is engaged in some violation of the law. *Terry* v *Ohio*, 392 U.S. 1, 27 (1968):

> "And in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized 'hunch' but to *specific* reasonable inferences which he is entitled to draw from the facts *in light of his experience*." (emphasis supplied.)

In this regard, it is significant that the officer involved in *Terry* v *Ohio* had been in law enforcement for thirty-nine (39) years, and had been patrolling the same area in downtown

Cleveland for over thirty (30) years. In the case at bar, Officer Bratton had been a policeman for only six (6) months at the time of the stop in question.

Defendant respectfully contends that the decision in this case is in direct conflict with the principles established in *Terry* v *Ohio*, *Delaware* v *Prouse* and *Brown* v *Texas*. Defendant further suggests that the case at bar is, factually, more closely analogous to *Sibron* v *New York*, 392 U.S. 40 (1968) in which it was held that the mere fact that a New York City policeman had observed a person conversing with known heroin addicts did not give rise to such reasonable suspicion as would support a stop of that person.

In the case at bar, Officer Bratton observed the Defendant sitting in his automobile in a motel parking lot where, supposedly, there had been vandalism and thefts in the past. Officer Bratton spoke with the desk clerk and was informed that there had been no problems of any kind in the area that night. Any suspicions which Bratton may have harbored up until that time should have been allayed by the assurances given by the desk clerk without any need for further investigation. The asserted fact that the Quality Inn parking lot may have been a so-called high crime area does not constitute a sufficient basis upon which to predicate the stop of Defendant's automobile. Officer Bratton was unable to point to any specific facts that would support a reasonable suspicion that the Defendant was engaged in any misconduct. See, *Brown* v *Texas*, 392 U.S. 1, 27 (1968):

> "The record suggests an understandable desire to assert a police presence; however, that purpose does not negate Fourth Amendment guarantees."

Accordingly, under the decisions of this court, the initial stop of the Defendant's automobile should have been deemed unlawful and the .25 caliber pistol found on the front seat

should have been excluded from evidence at Defendant's trial.

The issue involved herein is a recurring question of substantial significance. It is axiomatic that the right of every person to move about free from restraint or interference is a fundamental component of liberty. The decision of the Ohio Supreme Court would permit stops and seizures of persons based upon the subjective whims, personal predilections and unconstrained discretion of individual police officers in a wide variety of circumstances. While it cannot be disputed that the police must remain free to act in response to specific particularized circumstances which objectively require police intervention, there is a need to carefully define when an officer is justified in accosting a citizen in order to preserve the freedom of movement which is intrinsic to our way of life. Police-citizen confrontations are by no means a rare phenomenon. To allow the scope of permissible police conduct to be controlled by the policeman's own subjective feelings is tantamount to granting law enforcement officers unfettered discretion in restraining the liberty of citizens at large. Such a state of affairs not only is contrary to the law as established by the decisions of this court, but also create a situation in which personal liberty receives no meaningful protection under the law. Accordingly, the Defendant respectfully beseeches this court to review the decision of the Ohio Supreme Court in the instant case.

CONCLUSION

For all of these reasons, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of the State of Ohio in this case.

WHEREFORE, this petition for a writ of certiorari to the Supreme Court of the State of Ohio should be granted.

Respectfully submitted,

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APPENDIX

THE STATE OF OHIO, APPELLEE, *v.* FREEMAN, APPELLANT.

[Cite as State v. Freeman (1980), 64 Ohio St. 2d 291.]

Criminal law—Investigative stop by police—Propriety—Search and seizure—Defendant cannot object, when—Abandoned property.

1. The propriety of an investigative stop by a police officer must be viewed in light of the totality of the surrounding circumstances.
2. A defendant has no standing under the Fourth Amendment to the United States Constitution to object to a search and seizure of property that he has voluntarily abandoned.

(No. 80-701—Decided December 30, 1980.)

CERTIFIED by the Court of Appeals for Lucas County.

In the early morning hours of March 24, 1979, Vernon Lee Jessee, the alleged victim herein, entered a restaurant in downtown Toledo, Ohio. While inside the restaurant, Jessee inadvertently displayed a sizable sum of money in the presence of Gregory Freeman, appellant herein.

After Jessee left the restaurant, he allegedly was compelled at gunpoint by appellant to go to a public housing project, where he was forced out of his car into an apartment. Thereafter, he was struck with the barrel of a pistol and suffered lacerations. His money and ring were stolen. Jessee managed to escape and went to his mother's home. He was taken to the hospital, whereupon he contacted police, at approximately 6:15 a.m., concerning the incident.

On March 25, 1979, at approximately 3:00 a.m., Officer Robert L. Bratton of the village of Northwood police department was on routine patrol in the vicinity of a Quality Inn in Northwood. In the course of patrolling the area, Bratton entered the parking lot of the motel and passed through its parking lot. At the rear of the motel, Bratton observed a male person, later identified as appellant, sitting alone in an automobile with the engine turned off. Bratton observed further that all the other cars in the lot were unoccupied.

Bratton continued his patrol through the lot and then exited the lot and patrolled several side streets. Approx-

imately 15 to 20 minutes later, he returned to the parking lot of the motel and again observed appellant sitting alone in the idle automobile. Then, Bratton drove to the front of the building and entered the motel. While inquiring from the desk clerk whether there was any trouble or disorder that evening, Bratton saw appellant exiting the parking lot. Thereupon, Bratton stopped appellant's vehicle within a short distance from the motel.

Bratton explained to appellant that he had stopped him due to the fact that there had been much theft and criminal damage in the parking lot lately.

Bratton asked for some identification. Appellant voluntarily gave Bratton the driver's license of one Ben Williams. After a record check on this driver's license, Bratton discovered that a traffic warrant was still outstanding on Ben Williams.

Bratton then advised appellant that he would have to be detained. An officer from the Rossford police department arrived at the scene while Bratton was writing up the field report. As appellant was getting out of his automobile, the Rossford officer noticed a gun on the front seat of appellant's automobile. He informed Bratton, who quickly grabbed the appellant and then secured the gun.

A few days later, on March 28, 1979, Jessee, the victim of the robbery, identified appellant from an array of photographs at the detective bureau. On that same date, warrants for appellant's arrest were issued.

On April 20, 1979, Sergeant William Holmes of the Toledo police department was working on an off-duty job as a security guard at the Greyhound bus station located in downtown Toledo. Holmes maintained the practice of keeping photographs in his possession of persons wanted for serious crimes. He recognized appellant from these photos.

Holmes approached appellant and placed him under arrest. Appellant verbally protested that there must be some mistake, but yet started to accompany Holmes through the bus station, carrying three pieces of luggage. While near the doors, appellant quickly dropped his luggage, exited through the doors and then ran away from Holmes.

Appellant was apprehended and taken, along with his lug-

gage, to the detective bureau. After being advised of his legal rights, appellant's luggage was "inventoried" in his presence. Among other contents, a receipt for the purchase of a Cadillac on March 24, 1979, was found. That same receipt, as well as the gun recovered by Bratton, were introduced in evidence at trial.

Appellant was indicted for aggravated robbery in violation of R. C. 2911.01 and for kidnapping in violation of R. C. 2905.01(A), both counts being joined in a single indictment.

Appellant filed a motion to suppress evidence, which included the gun, the receipt and other physical evidence. After a hearing, the court overruled the motion to suppress. The case proceeded to trial to a jury, and appellant was found not guilty of kidnapping, but guilty of aggravated robbery.

The Court of Appeals affirmed the judgment of conviction and the denial of the suppression of both the gun and the receipt.

The Court of Appeals, finding its judgment to be in conflict with the judgment of the Court of Appeals for Summit County in *State* v. *Pavlic* (C.A. No. 9408, February 13, 1980), unreported, and that of the Court of Appeals for Hamilton County in *State* v. *Barrow* (1978), 60 Ohio App. 2d 335, certified the record of the case to this court for review and final determination.

Mr. Anthony G. Pizza, prosecuting attorney, and *Mr. David O. Bauer,* for appellee.

Mr. John F. Potts, for appellant.

LOCHER, J. Appellant, in his first proposition of law, asserts, in essence, that, in light of the facts of this cause, the officer did not have specific and articulable facts which would reasonably lead him to believe that appellant was involved in specific criminal activity. Stated otherwise, appellant claims that the seizure of the gun was unlawful, since it is the "fruit of the poisonous tree" of an illegal stop.

We find no merit in this contention.

It is elementary and undisputed herein that, if the initial stop of the appellant was valid and proper, the seizure of the gun was also proper, since it was in plain view of the officer.

See *Harris* v. *United States* (1968), 390 U. S. 234; *Coolidge* v. *New Hampshire* (1971), 403 U. S. 443.

It is important to note that the concern herein involves an investigative stop and not a question of probable cause incident to an arrest. All facts and consequences after the initial stop are undisputed. The record discloses that appellant, after being asked by the officer for identification, submitted, without objection, the driver's license of Ben Williams, which had an outstanding traffic warrrant, thereby mandating a further detainment.

Thus, the pivotal issue is limited to the incident leading up to the initial investigative stop.

In *United States* v. *Constantine* (C.A. 4, 1977), 567 F. 2d 266, the court commented upon the permissibility of an investigative stop. The court aptly noted, at page 267:

"In *Terry* v. *Ohio*, 392 U. S. 1, 21***(1968), the Court found that the governmental concern in curtailing crime would permit a police officer in appropriate circumstances to 'approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest.' *Id.*, at 22***. The Court in *United States* v. *Brignoni-Ponce*, 442 U. S. 873***(1975), held that probable cause was not required for a brief investigative stop***."

Analysis of the investigative stop herein initiates a discussion of *Terry* v. *Ohio*, *supra*. The United States Supreme Court, in *Terry*, at pages 21-22, stated:

"***And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.***[W]ould the facts available to the officer at the moment of the seizure of the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate? Cf. *Carroll* v. *United States*, 267 U. S. 132 (1925); *Beck* v. *Ohio*, 379 U. S. 89, 96-97 (1964).***" (Footnotes omitted.)

Other courts have given guidance in the application of facts that are considered "specific and articulable," so as to be within the permissible confines for a stop as enunciated in *Terry*, *supra*.

In *United States* v. *Constantine, supra* (567 F. 2d 266), the court, at page 267, stated:

"Assessing the need for a brief stop, 'the circumstances * * * before [the officer] are not to be dissected and viewed singly; rather they must be considered as a whole.' *United States* v. *Hall,* 174 U. S. App. D. C. 13, 15, 525 F. 2d 857, 859 (1976). * * * An area's disposition toward criminal activity is an articulable fact. *United States* v. *Brignoni-Ponce,* 422 U. S. at 884-885 * * *. The mood of the precinct and the circumambient activities * * * 'are to be viewed through the eyes of a reasonable and cautious police officer on the scene, guided by his experience and training.' *United States* v. *Hall,* 174 U. S. App. D. C. at 15, 525 F. 2d at 859. See *United States* v. *Magda,* 547 F. 2d 756, 758 (2 Cir. 1976)."

We hold that the facts as presented herein did give the officer the right to minimally intrude upon the appellant. The specific and articulable facts supporting our conclusion are, to wit: (1) the location of the investigation being a high crime area; (2) the officer being quite aware of recent criminal activity in the motel parking lot in which appellant was parked; (3) the time of night being 3:00 a.m.; and (4) the appellant sitting alone in the car at the rear of the building for approximately 20 minutes with the engine turned off.

All facts considered, we hold that the officer was only performing his police duties in a conscientious manner. It is contra to the very nature of the duty of an officer to patrol in a high crime area and to be oblivious to such aforementioned facts. This line of reasoning was advanced by the United States Supreme Court, in *Adams* v. *Williams* (1972), 407 U. S. 143, when, at pages 145-146, it stated:

"In *Terry* this Court recognized that a 'police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest.' *Id.,* at 22. The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, *Terry* recognizes that it may be the essence

of good police work to adopt an intermediate response. See *id.*, at 23. A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information may be most reasonable in light of the facts known to the officer at the time. *Id.*, at 21-22; see *Gaines* v. *Craven*, 448 F. 2d 1236 (CA9 1971); *United States* v. *Unverzagt*, 424 F. 2d 396 (CA8 1970)."

In complete compliance with the above-quoted passage, the officer herein made a brief stop of the appellant in order to investigate and to "maintain the status quo momentarily while obtaining more information," to wit: some identification.

Other jurisdictions, when presented with similar arguments, are in accord with our determination. In *People* v. *Damaska* (1978), 404 Mich. 391, 273 N. W. 2d 58, the Supreme Court of Michigan determined that police officers were justified in making an investigative stop of a vehicle, in view of, *inter alia*, the fact that the defendant emerged from a business parking lot late at night with his car lights extinguished and that the office building had been subject to recent burglaries. See *United States* v. *Constantine*, *supra*, and *Commonwealth* v. *Almeida* (1977), 373 Mass. 266, 366 N. E. 2d 756.

For the foregoing reasons, appellant's first proposition of law is overruled.

In his second proposition of law, appellant asserts that "[a] search warrant is required for the search of luggage that is not within the immediate possession and control of a person [appellant] who has been placed under arrest."

In accordance with the relevant facts of this cause, we find that appellant had abandoned his luggage, and thus we determine that his second proposition of law is without merit.

It is undisputed that the question herein is *not* complicated by the possibility that the acts taken to establish the abandonment may have been brought about by unlawful police conduct. Rather, the arrest was made upon a valid warrant issued for appellant.

It is rudimentary that one does not have standing to object to a search and seizure of property that he has voluntarily abandoned. *Abel* v. *United States* (1960), 362 U. S. 217 (search of hotel room by FBI agents without a warrant after defend-

ant had relinquished his room and seizure of abandoned articles held permissible); *Parman* v. *United States* (C.A. D.C. 1968), 399 F. 2d 559 (evidence obtained from abandoned apartment even without search warrant held admissible); *United States* v. *Edwards* (C.A. 5, 1971), 441 F. 2d 749 (search of car trunk proper when defendant abandoned auto and fled on foot after a high speed chase with police); *United States* v. *Moore* (C.A. D.C. 1972), 459 F. 2d 1360 (warrantless search of auto permissible when auto involved in a robbery was abandoned after the vehicle went out of control); *United States* v. *Colbert* (C. A. 5, 1973), 474 F. 2d 174 (defendants who disclaimed interest in briefcases had no standing to object to the search of abandoned briefcases); and *Commonwealth* v. *Shoatz* (1976), 469 Pa. 545, 366 A. 2d 1216 (the search of suitcases held permissible on abandonment theory when defendants dropped suitcases and fled on foot when approached by police).

The issue is, therefore, factual as to whether the appellant's action herein constitutes abandonment of the suitcases.

The court, in *United States* v. *Colbert, supra,* at page 176, gives some guidance to our determination, as follows:

"Abandonment is primarily a question of intent, and intent may be inferred from words spoken, acts done, and other objective facts. *United States* v. *Cowan,* 2d Cir. 1968, 396 F. 2d 83, 87. All relevant circumstances existing at the time of the alleged abandonment should be considered. *United States* v. *Manning,* 5th Cir. 1971, 440 F. 2d 1105, 1111. Police pursuit or the existence of a police investigation does not of itself render abandonment involuntary. See *Abel* v. *United States, supra; Edwards* v. *United States,* 5th Cir. 1971, 441 F. 2d 749; *Lurie* v. *Oberhauser,* 9th Cir. 1970, 431 F. 2d 330. The issue is not abandonment in the strict property-right sense, but whether the person prejudiced by the search had voluntarily discarded, left behind, or otherwise relinquished his interest in the property in question so that he could no longer retain a reasonable expectation of privacy with regard to it at the time of the search. *United States* v. *Edwards, supra,* 441 F. 2d at 753; *cf. Katz* v. *United States,* 1967, 389 U. S. 347***."

The pertinent facts in the instant cause reveal that appellant tried to deceive the arresting officer into believing that

he would cooperate, following which appellant suddenly dropped his luggage, exited through the swinging doors and fled on foot from the scene of the arrest. As far as appellant was concerned the luggage was *bona vacantia*, and, therefore, its search was proper. The legal effect of the abandonment, as noted above, is to deprive the appellant of standing to challenge the subsequent search.

Appellant's propositions of law being without merit, the judgment of the Court of Appeals is affirmed.

Judgment affirmed.

MCBRIDE, SWEENEY, HOLMES and DOWD, JJ., concur.

W. BROWN, J., concurs in paragraph one of the syllabus and in the opinion.

CELEBREZZE, C. J., dissents.

MCBRIDE, J., of the Second Appellate District, sitting for P. BROWN, J.

WILLIAM B. BROWN, J., concurring. I concur in the majority opinion and in paragraph one of the syllabus. I believe paragraph two of the syllabus should more clearly articulate that an individual forfeits his standing under the Fourth Amendment to object to a search and seizure of his property only if he has abandoned said property *at the time of the search*. See *United States* v. *Edwards* (C.A. 5, 1971), 441 F. 2d 749; *Katz* v. *United States* (1967), 389 U. S. 347.

CELEBREZZE, C. J., dissenting. I would reverse the judgment of the Court of Appeals. In my judgment, the initial stop of appellant was not based on any articulable suspicion of criminal conduct, the test mandated by controlling precedent of the United States Supreme Court.

At the outset, I am troubled by the implication in the majority opinion that appellant's constitutional claim is somewhat less than noteworthy simply because the arresting officer's initial stop "minimally intrude[d] upon the appellant." It is precisely unchecked "minimal" intrusions of this nature which inevitably lead to maximum disregard of fundamental constitutional protections.

Dissenting Opinion, per CELEBREZZE, C. J.

It is a basic tenet of American constitutional law that a police stop of a motor vehicle, however brief, constitutes a "seizure" within the meaning of the Fourth and Fourteenth Amendments to the United States Constitution. *Delaware* v. *Prouse* (1979), 440 U. S. 648, 653; *United States* v. *Martinez-Fuerte* (1976), 428 U. S. 543, 556-558; *United States* v. *Brignoni-Ponce* (1975), 422 U. S. 873, 876. See, generally, *Brown* v. *Texas* (1979), 443 U. S. 47; *Terry* v. *Ohio* (1968), 392 U. S. 1 (hereinafter "*Terry*"). Moreover, "[i]t must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person." *Id.* at 16.

In both *Terry* (Chief Justice Warren) and *Brown* v. *Texas*, *supra* (Chief Justice Burger for a unanimous court), the United States Supreme Court has required a police officer, prior to effecting an investigative stop, to have a reasonable suspicion, based on objective facts, that the individual is involved in criminal activity. More specifically, "[a]nd in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry*, at 21.

The flaw in the state's case is that it has failed to demonstrate the requisite specific, articulable facts which would justify a reasonable suspicion that appellant was involved in any criminal conduct. The record illustrates that, on the date of the arrest, the police officer initially observed appellant sitting alone in a car for a short period of time in the parking lot of a motel, which was located in what was evidently considered by the police to be a high crime area. Apparently, due to police information that there had been a recent rash of automobile thefts and damage in the area, the officer became suspicious of this situation and decided to take further action. Accordingly, he entered the motel lobby and interrogated the desk clerk as to whether there had been any trouble or disorder in the motel or parking lot that evening. The desk clerk assured the officer that there had been no trouble or disorder. There is no indication that the police officer observed any "stripped" cars, pried-open car doors or broken windshields in the parking lot at that time. Indeed, to the ex-

tent that it can be discerned from the record, not even one hubcap had been pilfered from the motel parking lot that evening.

Thus, the stop of appellant's car was supported by nothing more substantial than the officer's "inarticulate hunch." *Terry*, at 22. Considering the circumstances as a whole, the police officer had, at best, reason to keep appellant under further surveillance. However, at no point was the officer justified in stopping appellant for the purpose of investigative questioning. As Circuit Judge Leventhal ruled in *United States* v. *Montgomery* (C.A. D.C. 1977), 561 F. 2d 875, 879:

"The inarticulate hunch, the awareness of something unusual, is reason enough for officers to look sharp. Their knowledge and experience identify many incidents in the course of a day that an untrained eye might pass without any suspicion whatever. But awareness of the unusual, and a proper resolve to keep a sharp eye, is not the same as an articulated suspicion of criminal conduct. Defendant's acts, as reported, were too innocuous to warrant the intrusion of a temporary seizure for questioning."

Furthermore, I submit that the facts at bar are fundamentally distinguishable from the facts of *Terry*. In *Terry*, the police officer observed the two defendants proceeding back and forth along an identical route, where they paused to stare in the same store window approximately 24 times. Each pause was invariably followed by a conference between the two on a street corner, at one of which they were joined by a third man, who hastily left. The United States Supreme Court ruled that the officer, based on his on-the-spot observations, legitimately investigated this suspicious conduct by stopping and questioning the defendants. In so ruling, however, the court emphasized that the officer had been a policeman for 39 years, a detective for 35 years and, finally, that he had been assigned to this particular area of downtown Cleveland to patrol for shoplifters and pickpockets for 30 years. *Terry*, at 5.

Clearly, the *Terry* fact pattern differs radically from the case at bar, in which appellant was observed sitting in a car, minding his own business, in a motel parking lot where there were no signs of automobile theft or other criminal activity. I am also compelled to point out that the arresting officer in this

case, unlike Officer McFadden in *Terry*, was a rookie patrolman who had been on the force for approximately six months. Thus, the foregoing factual distinctions between the two cases require different results.

Although I acknowledge that the officer's stop of appellant appears to have been made in good faith, this, by itself, does not justify the investigative questioning. As Chief Justice Burger observed in *Brown* v. *Texas, supra*, at 52:

"The record suggests an understandable desire to assert a police presence; however, that purpose does not negate Fourth Amendment guarantees."

When reasonable, articulable, objective grounds for suspecting that an individual is involved in criminal activity are present, I would approve an investigative stop by a police officer. However, to allow a stop in a case like the one *sub judice*, where these grounds are absent, would be to sanction stops and seizures of any citizen based on nothing more than the baseless whim, personal predilection and unconstrained discretion of the individual police officer. See *Brown* v. *Texas, supra*. See, generally, *Almeida-Sanchez* v. *United States* (1973), 413 U. S. 266, 270; *Camara* v. *Municipal Court* (1967), 387 U. S. 523, 528.

As the Supreme Court has consistently recognized:

"No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Union Pac. Ry. Co.* v. *Botsford* (1891), 141 U. S. 250, 251.

In view of the fact that we live in a free and open society, I would reverse the judgment of the Court of Appeals in order to protect the inestimable right of personal security that we all enjoy.

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,
City of Columbus.

19 80 TERM

To wit: December 30, 1980

The State of Ohio,
Appellee,

vs.

Gregory Freeman,
Appellant.

No. 80-701

CERTIFIED BY
~~APPEAL FROM~~ THE COURT OF APPEALS

for LUCAS *County*

12a

This cause, here on ~~appeal from~~ certification by *the Court of Appeals for* LUCAS *County, was heard in the manner prescribed by law. On consideration thereof, the judgment of the Court of Appeals is affirmed* for the reasons set forth in the opinion rendered herein,

and it appearing that there were reasonable grounds for this appeal, it is ordered that no penalty be assessed herein.

It is further ordered that the ....appellee.... *recover from the* ....appellant.... its .... *costs herein expended; that a mandate be sent to the* COMMON PLEAS COURT *to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for* LUCAS *County for entry.*

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this.....day of..... 19.....

.....*Clerk*

.....*Deputy*

**OPINION OF THE COURT OF APPEALS,
LUCAS COUNTY, OHIO**

IN THE COURT OF APPEALS OF LUCAS COUNTY, OHIO

State of Ohio,	C.A. No. L-79-200
Plaintiff-Appellee	C.P. No. CR79-5834
v.	OPINION
Gregory Freeman	Decided:
Defendant-Appellant	March 14, 1980

Mr. John F. Potts, Counsel for Appellant.

Mr. Bruce L. Schafer, Assistant Lucas County Prosecutor, Counsel for Appellee.

* * *

WILEY, J. Defendant-appellant, hereinafter referred to as the appellant, was found guilty after a trial to a jury on the charge of aggravated robbery and was sentenced thereon. The jury also returned a verdict of not guilty on a kidnapping charge. Timely appeal was filed.

The record reveals a rather bizarre background for the proceedings herein. The alleged victim, Vernon Lee Jessee, reported to the police that in the early morning hours of March 24, 1979, he had inadvertently displayed a large roll of currency in the presence of appellant at a restaurant located in a high crime area in the city of Toledo. Upon leaving the restaurant, Jessee reported that he was forced at gunpoint by appellant to go to Port Lawrence Homes, a public housing project, where he was forced out of his car into an apartment. Thereupon, he was struck with a barrel of a pistol and suf-

fered lacerations about the mouth; his money and a ring were stolen. Jessee states that he managed to escape, returned to his home, and then was taken to a hospital. The record indicates he contacted the police while at the hospital at approximately 6:00 a.m., on the morning of the alleged robbery, March 24, 1979.

At approximately 3:00 a.m., the following morning, March 25, 1979, police officer Bratton, on routine patrol, entered the parking lot of Quality Inn at Wales Road in Northwood, Ohio, and observed a male person, later identified as the appellant herein, sitting in an automobile with the lights and engine turned off. Bratton continued through the parking lot and patrolled several side streets, returned to the lot and observed defendant still in the automobile. Bratton went in the Quality Inn and determined from the desk clerk that there had been no problem in the area that evening. While at the desk, Bratton observed the automobile leaving the parking lot and thereupon stopped the vehicle a short distance away. He explained to the appellant that he was stopping the vehicle because there had been a lot of theft and criminal damage in the parking lot and asked if the defendant would state why he was there. Defendant responded that he had a lady friend who was in a room at the Quality Inn and that he had been visiting her. Officer Bratton then asked the driver for some identification and was given a driver's license in the name of Ben Williams. The check then made by the officer indicated that a warrant was outstanding on Ben Williams. Bratton advised defendant he would have to be detained for the Toledo Police, and stated: "Why don't you step out of the car, go back to the police cruiser and wait for Toledo." At about this time and place, a Rossford police officer had arrived at the scene just as the defendant was getting out of the car. The Rossford police noticed a gun on the front seat and yelled at Bratton; whereupon Bratton grabbed defendant and secured

the gun. The record indicates nothing further concerning any proceedings against the defendant in regard to a gun; however, the gun was a loaded .25 automatic and was introduced into evidence at the trial of the defendant herein.

At a pre-trial hearing, on a motion to suppress, the officer explained the stopping of the defendant in the parking lot by stating; "Primarily because of the high crime that we've had in that area with B and E to autos, a lot of criminal damage. That was the reason that I stopped him."

On the morning of March 24th, Jessee pointed out to Detective Johnson the apartment at Port Lawrence Homes where a blood-stained washcloth was found, together with a medallion identified as belong to Jessee. Two women were at the apartment at this time. Thereafter, on March 28, 1979, Jessee identified defendant from a photo array of eight photographs at the detective bureau of the city of Toledo. On this date affidavits were signed by Jessee and warrants issued against the appellant for aggravated robbery, kidnapping and felonious assault. On April 5, 1979, a general pickup order was issued together with a photo, description, and the charges for which appellant was wanted.

Sergeant Holmes, of the Toledo Police Division, testified that on April 20, 1979, he was working security at Greyhound (Central Station) as a second job at approximately 6:00 p.m. He observed the appellant in the baggage room receiving some baggage. Holmes met the appellant leaving the baggage room, carrying 5 pieces of luggage, and stopped the appellant, stating to him, "Gregory Freeman, you're under arrest * * *." Appellant claimed there must be a mistake and Officer Holmes thereupon indicated he would like to check it out and asked Freeman to accompany him to an office for that purpose. Appellant had five pieces of luggage and asked Holmes to carry some of the luggage. Holmes took the

smallest two, leaving the appellant with the other three larger bags. As the appellant was going through some swinging doors, he dropped his bags and ran, but stopped when Officer Holmes threatened to shoot him. After securing the appellant and handcuffing him, the baggage was secured and both the appellant and baggage were brought to the Safety Building. During the questioning of the appellant at the Safety Building, Detective McCorvy checked the bags and inventoried the contents in appellant's presence. During this procedure, McCorvy found a receipt for the purchase of a Cadillac dated March 24, 1979, indicating $1,375.00 was received by a Jeffrey Wolkins from one Danny Ray Palmer. A copy of this receipt was made and the original returned to the baggage. A .32 caliber revolver was also found in one of the bags. With the exception of the receipt and the .32 revolver, all items were released several days later to a young lady friend of the appellant.

At trial the evidence was undisputed that Jessee had had the sum of approximately $1575.00 on the evening of March 23, 1979, including 15 one-hundred dollar bills and 1 fifty-dollar bill, 1 twenty-dollar bill and 3 one-dollar bills. The $1575.00 was in a separate pocket from the $23.00.

Jeffrey Wolkins testified that he had sold the Cadillac to a person giving the name as Danny Ray Palmer and that the $1375.00 purchase price was paid in cash with 13 one-hundred-dollar bills, a fifty dollar bill, and a twenty-dollar bill and five ones, at about 4:30 or 5:00 p.m., on Saturday, March 24, 1979. Mr. Wolkins identified the defendant Gregory Freeman in the courtroom as the person to whom he had sold the Cadillac under the name of Danny Ray Palmer.

Defendant took the stand and testified that he had purchased the Cadillac and had paid cash but did not remember the denomination of the bills with which payment was made.

Appellant stated that he was a pimp and that he had received about $1,100 from his girl, Lavonda, also known as Habit, and had used this money toward the purchase of the Cadillac which was purchased from Mr. Wolkins.

Appellant also stated that this amount of money was more than Lavonda would ordinarily earn and that he knew there must have been a "sting."

The first of two assignments of error states:

> "The denial of defendant's motion to suppress the gun found during the stop of his automobile constitutes prejudicial error."

This assignment of error is found not well taken in that the principles enunciated in Terry v. Ohio, 392 U.S. 1, are controlling. At page 21 of Terry, supra, the Supreme Court stated:

> "And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rationale inferences from those facts, reasonably warrant that intrusion. * * * would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate? Cf. Carroll v. United States, 267 U.S. 132 (1925); Beck v. Ohio, 379 US. 89, 96-97 (1964). (Footnote 20 also referred to cases cited at note 18, supra. At footnote supra the following statement is made: "This demand for specificity in the information upon which police action is predicated is the central teaching of this Court's Fourth Amendment jurisprudence." (Then a number of cases are cited.)

The specific and articulable facts herein include the following: 1) The officer was on routine patrol in the village of Northwood (by statute, R.C. 703.01 provides that municipal corporations with a population of less than 5,000 registered resident electors or resident voters are classified as villages). The gun sought to be suppressed was the gun obtained by Officer Bratton on March 25, 1979, at approximately 3:00 a.m., at Northwood, Ohio. Officer Bratton testified that it was 3:00 a.m., that he had observed the appellant in the parking lot in an auto with his motor and lights off; other cars in the area were unoccupied; after an interval of 10 or 15 minutes he had returned and found the same situation continuing, that he was checking with the clerk at the Quality Motel who had advised there had been no trouble at night, but upon observing the defendant driving away did stop the automobile. The officer carefully explained to the appellant why he was stopped. The record indicates no protest whatsoever was made by the appellant. Upon the officer's asking the defendant for some identification, the appellant readily complied by proffering a driver's license with the name of Ben Williams thereon. Officer Bratton stated the reason that he had stopped appellant was:

> "Primarily because of the high crime that we've had in that area with B and E to autos, a lot of criminal damage. This was the reason that I stopped him."

The officer herein met the standard stated in Terry, supra, 21: "And in justifying the intrusion the police officer must be able to point to specific and articulable facts which taken together with rational inferences from those facts, reasonably warrant that intrusion."

Up to this point, we find that the interference with appellant's freedom was minimal and that no constitutional rights had been violated. Under these circumstances, it is ap-

parent that Officer Bratton was acting only in good faith as a conscientious police officer and that the stopping of the appellant's automobile was well within the officer's duty and within the words of the court in Terry v. Ohio, 392 U.S. 1, 23 (1968): "It would have been poor police work indeed for an officer * * * to have failed to investigate this behavior further."

Upon checking the driver's license proffered by the appellant and finding that warrants were outstanding for "Ben Williams", whom the appellant claimed to be, Officer Bratton proceeded in an unquestionably constitutional manner. We determine that the legitimate expectations of privacy that the appellant had at the time and place involved herein did not preclude the officer's conduct and no constitutional rights of the appellant were violated. See Rakas v. Ill., 439 U.S. 128, 151, in the concurring opinion of Justice Powell.[1]

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[1] Justice Powell further stated in Rakas, supra, at page 151 as follows:

> "This Court's decisions since Jones have emphasized a sounder standard for determining the scope of a person's Fourth Amendment rights: Only legitimate expectations of privacy are protected by the Constitution. In Katz v. United States, 389 U.S. 347 (1967), the Court rejected the notion that the Fourth Amendment protects places or property, ruling that the scope of the Amendment must be determined by the scope of privacy that a free people legitimately may expect. See id., at 353. As Mr. Justice Harlan pointed out in his concurrence, however, it is not enough that an individual desired or anticipated that he would be free from governmental intrusion. Rather, for an expectation to deserve the protection of the Fourth Amendment, it must 'be one that society is prepared to recognize as "reasonable." ' See id., at 361."

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Appellant cites the recent case of Brown v. Texas, 61 L. Ed. 2d 357, 99 S. Ct. — (decided June 25, 1979) wherein there was a conviction under Texas law for defendant's refusal to identify himself after being stopped by police and the conviction was held improper because the officers stopped defendant without reasonable suspicion of criminal activity. The facts in Brown v. Texas are distinguishable from the facts in the case sub judice in that in Brown, supra, the person stopped was walking in an alley where it was not uncommon for people to walk; the time of day was 12:45 in the afternoon. The defendant in Brown v. Texas, supra, was actually arrested for the sole reason that he refused to identify himself; whereas, in the case sub judice the defendant readily attempted to identify himself by extending to the officer a driver's license which turned out to be not his own license. No arrest was made until further investigation revealed additional facts on which there was more than probable cause for the officer to make the actual arrest. As stated in Terry, supra, at page 20:

> "But we deal here with an entire rubric of police conduct — necessarily swift action predicated upon the on-the-spot observations of the officer on the beat — which historically has not been, and as a practical matter could not be, subjected to the warrant procedure. * * *
>
> "In order to assess the reasonableness of Officer McFadden's conduct as a general proposition, it is

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continued from previous page

and at page 152:

> "The ultimate question, therefore, is whether one's claim to privacy from government intrusion is reasonable in light of all the surrounding circumstances."

> necessary 'first to focus upon the governmental interest which allegedly justifies official intrusion on the constitutionally protected interests of the private citizen," for there is 'no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails.' Camara v. Municipal Court, 387 U. S. 523, 534-535, 536-537 (1967)."

In the light of the particular circumstances and applying the standard of whether a man of reasonable caution is warranted in believing that the action taken was appropriate, we find that police officer Bratton did not make an unreasonable seizure of the appellant in violation of appellant's Fourth Amendment rights. Stated in another way, weighing the gravity of the public concerns served by the seizure herein, the degree to which the seizure advances the public interests, and the severity of the interference with the individual liberty, we find the balance in favor of the public concerns. The appellant's reasonable expectation of privacy under the circumstances herein was not subject to any arbitrary invasion made at the unfettered discretion of the police officer. Cf. Brown v. Texas, supra, at page 362.

The second assignment of error states:

> "THE DENIAL OF DEFENDANT'S MOTION TO SUPPRESS THE PHOTOCOPY OF THE BILL OF SALE THAT WAS SEIZED FROM HIS LUGGAGE CONSTITUTED PREJUDICIAL ERROR."

The record does not support the reference to a "bill of sale", but the item referred to was actually a receipt for a certain amount of money that had been paid by one Danny Ray Palmer to Jeffry L. Wolkins. The circumstances concerning the seizure of the luggage necessary to secure the receipt in-

troduced into evidence include the following: 1) It is undisputed that the arrest was a legal arrest made upon a warrant lawfully issued and the luggage searched was in the possession of the appellant at the time of his arrest. 2) The appellant attempted to trick the arresting officer by his expressed willingness to accompany the officer and then attempting to escape by dropping the luggage in his possession and fleeing the immediate scene. 3) The luggage was taken to the police station and, in the presence of the defendant, examination of the contents was made together with a record thereof.

This assignment of error is not well taken for the following enumerated reasons. 1) The search of the baggage, although not actually made until the baggage had been removed to the police station, was permissible as incident to a lawful arrest. Chimel v. California (1969), 395 U.S. 752, 23 L. Ed. 2d 685, 89 S. Ct. 2034. 2) The appellant had dropped the baggage and had attempted to flee the officer. In doing so he left that part of the baggage near the swinging doors in the bus station. It was later searched and in it the objectionable evidence, to-wit, the receipt, was found. Under these circumstances, the appellant can hardly claim any expectation of privacy in regard to the baggage. Abel v. United States (1960), 362 U.S. 217; United States v. Colbert (5th Cir. 1973), 474 F. 2d 174; Commonwealth v. Shoatz (Pa. 1976), 366 A. 2d 1216; United States v. Edwards (5th Cir. 1971), 441 F. 2d 749; State v. Brown (1975), 45 Ohio App. 2d 76.

At the police station, in the presence of the appellant, the police officer conducted an inventory search and listed all the items in the baggage. South Dakota v. Opperman (1976), 428 U.S. 364, 368-69, 373, 375-76.

Appellant cites the case of Arkansas v. Sanders, 61 L. Ed. 235, for the proposition that a person has a greater expecta-

tion of privacy in luggage than he would have in the contents of an automobile. This is true, but the court in the case of Arkansas v. Sanders, supra, indicated that the court was not considering the constitutionality of searches of luggage incident to the arrest of its possessor. See footnote 11 page 245 of Arkansas v. Sanders, supra, wherein the court also stated:

> "The state has not argued that respondent's suitcase was searched incident to his arrest, and it appears that the bag was not within his 'immediate control' at the time of the search."

Again reference is made to the words of Justice Powell in the case of Rakas v. Illinois, supra:

> "The ultimate question, therefore, is whether one's claim to privacy from government intrusion is reasonable in light of all the surrounding circumstances."

Applying this principle to the facts in this case, we find that appellant's claim to any privacy in the luggage involved is not reasonable and no constitutional right of the appellant was violated.

This court is not unaware of the many cases cited in both the appellant's brief and the appellee's brief. The court has examined these cases and acknowledges the relevancy of the statements made therein. However, in the final analysis, this court determines that the trend, as expressed by the Supreme Court of the United States in Rakas v. Illinois, supra, is the application of the principles announced therein that "the ultimate question, therefore, is whether one's claim to privacy from government intrusion is reasonable in light of all the surrounding circumstances." Furthermore, as indicated therein, "whatever the application of this standard may lack in ready administration, it is more faithful to the purposes of the

Fourth Amendment than a test focusing solely or primarily on whether the defendant was 'legitimately present during the search,' and it logically follows that applying this standard is also more faithful to the purposes of the Fourth Amendment than a test focusing upon 1) whether a police inventory was actually taken; 2) whether property was abandoned when dropped by the appellant fleeing the scene; 3) some other talismanic requirement to justify an officer's stopping a person in an automobile and requesting some identification or to search a person's luggage.

On consideration whereof, the court finds that the defendant was not prejudiced or prevented from having a fair trial, and judgment of the Lucas County Common Pleas Court is affirmed. This cause is remanded to said court for execution of sentence and for costs. Costs assessed against appellant.

JUDGMENT AFFIRMED.

Brown and Connors, JJ., concur.

Judge Frank W. Wiley, retired, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

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FILED
JUN 4 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1879

In the Supreme Court of the United States

OCTOBER TERM, 1980

GREGORY FREEMAN, PETITIONER

vs.

STATE OF OHIO, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO RESPONDENT'S BRIEF IN OPPOSITION

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No. 80-1879

In the Supreme Court of the United States

OCTOBER TERM, 1980

GREGORY FREEMAN, PETITIONER

vs.

STATE OF OHIO, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO RESPONDENT'S BRIEF IN OPPOSITION

Now comes the Respondent, State of Ohio, by and through David O. Bauer and James D. Bates, Assistant Prosecuting Attorneys of Lucas County, Ohio and respectfully requests that this Court deny the Petition for Writ of Certiorari, seeking review of the decision of the Supreme Court of Ohio.

REASONS WHY THE WRIT SHOULD BE DENIED

I. THE PETITIONER HAS FAILED TO RAISE A SUBSTANTIAL FEDERAL QUESTION.

The Supreme Court of the United States, pursuant to 28 U.S.C. §1257 (3) has jurisdiction to review cases in State Courts by way of certiorari in three situations: (1) where the validity of a Federal treaty or statute is drawn in question; (2) where the validity of a State statute is drawn in question on the ground of its being repugnant to Federal law; and (3) where a title, right, privilege, or immunity is set up or claimed "under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States".

It is fundamental to the jurisdiction of the Supreme Court pursuant to §1257 that there must be presented a substantial Federal question and that the question has been properly raised in the State Court proceeding. The Federal question presented must be more than a

formal one and must not be so devoid of merit as to be frivolous. Nor can it be foreclosed by prior decisions of the Supreme Court so that there is no real controversy. *Equitable Life Assurance Society v. Brown,* 187 U.S. 308 (1902). Any Federal issue not meeting these standards is considered insubstantial and is cause for dismissal of an appeal or a denial of a petition for writ of certiorari. *Zucht v. King,* 260 U.S. 170 (1922); *Palmer Oil Corp. v. Amerada Corp.,* 343 U.S. 390 (1951).

The issues raised by the Petitioner fail to meet the requirement of a substantial Federal question. There is no new or novel constitutional question presented and the case will affect few individuals, if any, other than the Petitioner.

II. THE PETITION FOR CERTIORARI SHOULD BE DENIED FOR THERE IS AN ABSENCE OF A LEGAL CONTROVERSY.

The Supreme Court generally will not grant certiorari when review is sought of a lower court decision which turns solely upon an analysis of the particular facts involved. In *United States v. Johnson,* 268 U.S. 220, 227 (1924), the Court held, "We do not grant certiorari to review evidence and discuss specific facts". This policy has most often been followed in cases such as this one where two separate appellate courts have concurred regarding the sufficiency of the facts.

Here, Petitioner's primary contention is that the facts herein do not justify the lower court decisions in view of this Court's pronouncements in *Terry v. Ohio,* 392 U.S. 1 (1968) and subsequent cases. As stated in *Graver Mfg. Co. v. Linde Co.,* 336 U.S. 271 (1948):

> A court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional show of error.

Review will be accepted and facts re-examined only when a case acquires importance for some other reason. In light of the above, it is apparent that here there is an absence of a legal controversy of importance.

The concept of importance relates primarily to the importance of the issues "to the public as distinguished from importance to the particular party involved". *Rice v. Sioux City Cemetery,* 349 U.S. 70, 79 (1955). In the Petition presently before the Court, the issues are not sufficiently important to the public or to other persons who may be affected by the case to warrant granting certiorari to the United States Supreme Court.

III. THE ISSUE PRESENTED BY THE PETITION WAS FULLY AND CORRECTLY DECIDED BY THE STATE COURT.

The record reveals that Officer Robert Bratton was on routine patrol in the early morning hours, checking the general area of a Quality Inn. This was known as a high crime area and the Officer was aware of the high frequency of theft and criminal damaging.

That night, on two separate occasions, within fifteen minutes, the Officer observed Petitioner sitting in a parked car with the engine and lights turned off. When Petitioner drove away the Officer initiated the stop that resulted in the seizure of the gun.

The issue then is confined to the propriety of the stop itself.

The appropriate test to be applied herein was enunciated by this Court in *Terry v. Ohio*, 392 U.S. 1 (1968); which stated:

> And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rationale inferences from those facts, reasonably warrant that intrusion.***would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate? Cf. *Carroll v. United States*, 267 U.S. 132 (1925); *Beck v. Ohio*, 379 U.S. 89, 96-97 (1964).

The Supreme Court of Ohio applied the *Terry* doctrine to the facts herein and concluded that there were "specific and articulable" facts which reasonably warranted the stop of Petitioner's vehicle.

Other State and lower Federal courts have utilized the decision in *Terry* to sustain similar stops and subsequent searches. See, *United States v. Magda*, 547 F. 2d 756 (2nd Cir., 1976), cert. den. 434 U.S. 878 (1977); *Commonwealth v. Almeida*, 366 N.E. 2d 756 (Mass. 1977); *People v. Domaska*, 273 N.W. 2d 58 (Mich., 1978); *United States v. Constantine*, 567 F. 2d 266 (4th Cir., 1977).

Delaware v. Prouse, 440 U.S. 648 (1979), involved a purely random traffic stop where the officer had no reason to stop the defendant. This Court's decision was limited to situations where the stop was made without any basis. The Court stated:

> Accordingly, we hold that except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment . . . We hold

only that persons in automobiles on public roadways may not for that reason alone have their travel and privacy interfered with at the unbridled discretion of police officers. *Delaware*, 59 L. Ed. 2d at 673.

In *Brown v. Texas*, 443 U.S. 47 (1979), the facts were also distinguishable from the present case. In *Brown*, two police officers while on patrol, saw the defendant and another man walking away from each other in an area noted for heavy drug traffic. They stopped and asked the defendant to identify himself and tell them what he was doing. One officer indicated that they stopped the defendant because the situation looked suspicious, and they had never seen him in that area before. The Court held that there was no basis for suspecting the defendant of misconduct, noting that the officer merely testified it looked suspicious, "but he was unable to point to any facts supporting that conclusion". Id. at 2641.

Neither of these cases apply to Petitioner. The stop was not at random, nor did the officer lack the articulable facts to warrant the Petitioner's stop. In the present case, Officer Bratton indicated his reason for stopping Petitioner. He said it was late at night and he observed a man in a parked car with the motor and lights off. The man remained in the parking lot in this fashion for an unusually long period of time. Furthermore, Bratton knew that this area had recently been inundated with crime. These were sufficient facts to give rise to a legitimate suspicion, and it would have been poor police work indeed to have failed to stop Petitioner and investigate further.

Thus, all of the post *Terry* cases cited by Petitioner are clearly not applicable on their facts. The Supreme Court of Ohio applied the proper test when it relied upon *Terry*. It set forth four (4) specific and articulable facts that were known to the officer and which rendered the stop constitutionally permissible. (See opinion of the Supreme Court of Ohio, p. 295).

As was stated by this Court in *Adams v. Williams*, 407 U.S. 143 (1972):

> The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, *Terry* recognizes that it may be the essence of good police work to adopt an intermediate response. A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time.

The Supreme Court of Ohio correctly applied the pertinent law and the case was therefore properly decided.

IV. THE DECISION APPEALED FROM IS NOT IN CONFLICT WITH DECISIONS OF COURTS FROM OTHER JURISDICTIONS.

This Court's decisions in *Delaware v. Prouse*, 440 U.S. 648 (1979), and *Brown v. Texas*, 443 U.S. 47 (1979), were merely clarifications of the doctrine of *Terry v. Ohio, supra.* As such, they simply illustrated two examples of fact patterns that were not sufficient to warrant an intrusion under *Terry.*

All of the decisions cited by Petitioner as being in conflict with that of the Supreme Court of Ohio are varying interpretations of fact patterns and their applicability to the *Terry* standard. Each hinges upon the individual court's perception of the facts of a given case and all followed the rule of *Terry* or the cases of *Prouse* or *Brown* which were predicated upon *Terry.* The Supreme Court of Ohio followed the same rule and is thus not in conflict with the other jurisdictions in terms of the legal standard to be applied.

CONCLUSION

For all of the reasons set forth above, this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

ANTHONY G. PIZZA,
PROSECUTING ATTORNEY
LUCAS COUNTY, OHIO

by

David O. Bauer,
Assistant Prosecuting Attorney

and

James D. Bates,
Assistant Prosecuting Attorney

CERTIFICATION

This is to certify that a copy of the foregoing was sent via U.S. Mail this 2nd day of June, 1981 to John F. Potts, at 4334 W. Central Ave., Suite 238, Toledo, OH, 43615; Ralph DeNune, III, 4334 Central Ave., Suite 238, Toledo, OH, 43615; and Paul L. Geller, at 520 Spitzer Bldg., Toledo, OH, 43604.

David O. Bauer,
Assistant Prosecuting Attorney

James D. Bates,
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